

UNITED STATES DISTRICT COURT  
MIDDLE DISTRICT OF PENNSYLVANIA

JOHN HOMA,  
Plaintiff

v.

ENT SURGICAL ASSOCIATES,  
THOMAS POLLOCK, D.O.,  
DARREN J. HOHN, D.O., and  
HAZLETON HEALTH & WELLNESS  
CENTER,  
Defendants

NO.: 3:09-CV-01965

(JUDGE VANASKIE)  
(MAGISTRATE JUDGE PRINCE)

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**REPORT AND RECOMMENDATION**

Pursuant to an Order entered on May 14, 2010 (Doc. 12), Honorable Thomas Vanaskie referred defendants' pending Motion to Dismiss plaintiff's Complaint to the undersigned Magistrate Judge for the purpose of preparing a Report & Recommendation.

Plaintiff has admitted that his Complaint (Doc. 1) was filed on October 9, 2009, and served on defendants ENT Surgical Associations (ENT), Pollock, and Hohn on February 8, 2010 (Doc. 5, ¶ 3; Doc. 9, ¶ 3). This delay in service is beyond the 120 days allowed by Fed. R. Civ. P. 4(m), and plaintiff has not shown good cause for the failure to serve within the prescribed time period. Plaintiff has agreed with defendants that his Complaint must be dismissed under Fed. R. Civ. P. 4(m) (Doc. 5, ¶ 4; Doc. 9, ¶ 4), and accordingly, it is recommended that the Motion to Dismiss of defendants ENT, Pollock, and Hohn be granted, and plaintiff's Complaint be dismissed as to these defendants without prejudice.

s/ William T. Prince

William T. Prince

United States Magistrate Judge

May 14, 2010